



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

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Draft Minutes Zoning Board of Adjustment August 23, 2016 7:30pm @ Community Development Department

Mark Samsel, Chairman - present

Heath Partington, Vice Chair - present

Pam Skinner, Secretary - present

Mike Scholz, Member - present

Bruce Breton, Member - excused

Mike Mazalewski, Alternate - present

Kevin Hughes, Alternate - excused

Jim Tierney, Alternate - excused

Jay Yennaco, Alternate - excused

Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Andrea Cairns, Minute Taker

Meeting called to order at 7:30p.m. by Chairman Samsel.

Chairman Samsel reviewed the process for the public.

Lot 2-B-300, Case #25-2016 continued from 8-9-2016

Applicant - Ryan Carr/GRD, LLC

Owner – Lionel St. Pierre & Joann Wing

Location – 38 E. Nashua Road

Zoning District – Rural

Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance to allow frontage of 152 ft. for lot A and 90.5 ft. for lot B where 175 ft. is required in this district.

Ms. Skinner read the case and abutters list into the record.

Daniel Miller represented the applicant. The owner purchased the property and is proposing to subdivide the lot into two lots. The property was part of a subdivision dating back to 1968 where all the lots had 151' of frontage. That lot was the only exception. There is an existing home on the lot. They do not meet the frontage requirements. They chose to make the size of the frontage for the lot with the existing dwelling closer to the rest of the lots in the neighborhood rather than split the frontage evenly between the two lots.

Mr. Miller noted frontage requirements are in place for emergency vehicle access and to prevent over-crowding. The lots are consistent with other lots in the area. They would be willing to split the frontage evenly if that is what the board wants. They can comfortably get a driveway on the proposed new lot. The public interest would not be affected by the variance, but would allow the owner to make maximum use of their property. The proposal would not affect surrounding property values since it is consistent with the other lots in the neighborhood. The structure can fit on the lot

44 and will comply with all other requirements. There is a wooded buffer along the side, which would
45 remain. The only trees they would need to remove are along the front for the driveway. In terms of
46 hardship, the lot dates back to 1968, there is not a lot of area to gain additional land to remedy the
47 frontage issue. They could potentially make one lot with conforming frontage, but they wanted to
48 avoid a “flag” lot.

49
50 Chairman Samsel noted the packet contained a configuration that presented a “flag” lot. Mr. Miller
51 noted they presented different plans to conservation. He submitted new plans into the record
52 (exhibit A).

53
54 *Ryan Carr, property owner*

55 Mr. Carr noted they still have to go to the planning board. They have done test pits, but have not
56 done soil mapping yet. They did not want to move forward with soil mapping until they had the
57 variance. Mr. Carr presented a map showing the lots along the road to show the size of abutting
58 properties.

59
60 *Jay Moltenbrey, 36 E. Nashua Road*

61 Mr. Moltenbrey noted that although the other seven lots do not meet today’s requirements, they met
62 the requirements when they were created. The original owner of the property maintained a larger
63 buffer. They are proposing a 90’ frontage when 175’ is required. Why do they have the requirement
64 if they are not going to follow it? It will impact the value of their property because they will lose the
65 wooded buffer. It would increase the tax rate. He does not believe it meets the five criteria. He
66 would hope they would require that the wooded buffer remain and the driveway would be as close
67 to the proposed lot A as possible.

68
69 Chairman Samsel questioned what Mr. Moletnbray’s frontage was. Mr. Moltenbray noted it was
70 around 150’ but did not know exact frontage. His driveway is just opposite the wooded buffer and
71 his home is close to the proposed lot line.

72
73 *Marilyn Lanza, 44 E. Nashua Road*

74 Ms. Lanza likes the rural nature of her property. She has lived there for many years. Putting in one
75 more home decreases the value of her property. The town gets more revenue but at the expense of
76 having a rural neighborhood.

77
78 *Karen Moltenbrey, 36 E. Nashua Road*

79 They are proposing half the requirement for frontage. The lot does get wider towards the back, but
80 not that wide. She is against the project. She does not see how her property value could increase.
81 The proposed dwelling is going to be behind her. She will see the new house.

82
83 Mr. Scholz questioned if Ms. Moltenbrey could see the existing dwelling. She noted she could in
84 the fall when there are no leaves on the trees. Ms. Moltenbrey added they would be taking a
85 conforming lot and making two non-conforming lots.

86
87 Mr. Miller noted the conceptual plans show the home at 179’ back from the front. They proved that
88 they could fit a home on the lot and meet all other requirements. They are not proposing a “flag” lot.

89
90 Mr. Carr apologized that the new plans were a surprise. When they went to conservation they
91 decided it was a better configuration. They would be happy to withdraw the application so everyone

would have time to review the materials if needed. Their intention is to not cut the buffer. They would be willing to write it into the plan that they would not disturb the buffer. They provided photos that showed the buffer. There is already an existing opening in the woods, which is where they determined they could put the home and not have to cut any trees. It would maximize the value of the property to have that wooded buffer. They would be happy to have that discussion with the planning board but they would be willing to accept a no cut zone as a condition of approval. They would also be willing to split the lot frontage so each lot would have 123' each.

Mr. Scholz questioned how far the existing garage was from the lot line. Mr. Carr noted it was 11' from the side. Mr. Scholz noted they would also need a variance for the garage because they are creating a new lot and all existing non-conforming structures are not in compliance.

Mr. Partington noted that if they include a no cut condition then they could not cut any trees at all, not just in the buffer. Mr. Carr noted they would like to remove some small brush for cosmetics, but they truly planned not to have to cut any trees.

Mr. Mazalewski noted without doing soil testing they even do not know if it can sustain the three-bedroom home. Mr. Carr noted as you come up the elevation the soils are better, they did do test pits. They believe the soils will sustain the 3-bedroom home. Mr. Carr added given the fact that the new plan was a surprise, they would be willing to come back with something more put together.

Mr. Moltenbrey noted even if the house went in that location it would meet the zoning regulations, but it still does not meet the frontage.

MOTION: Mr. Partington made a motion to go into deliberative.

Ms. Skinner seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel noted every case they hear is different and they weight the testimony separately.

Chairman Samsel questioned the non-conformity issue with the garage. Mr. Mazalewski noted they could remove the garage. Mr. Partington noted they could not force someone to remove a structure.

Mr. Partington reviewed the five criteria. In his opinion:

1. (contrary to public interest): meets the criteria
2. (spirit of the ordinance): meets the criteria
3. (substantial justice): in terms of the tax base, the revenue will go up, but if there are two children in the home, the revenue will go down. There is more negative to the public. He does not believe it meets the criteria.
4. (value of surrounding properties): meets the criteria
5. (hardship): it is not a unique situation. There is an existing home on the property and a usable lot. He does not believe it meets the criteria.

Mr. Scholz added that one of the abutters had concerns about the proposed home being right in their backyard and because of that he believes it does not meet criteria 4 – value of surrounding properties. He also agreed it did not meet substantial justice or hardship.

Ms. Skinner agreed they did not meet criteria 3, 4 or 5.

Mr. Mazalewski believed they did not meet criteria 5.

Chairman Samsel believed they did not meet criteria 4 or 5.

MOTION: Mr. Scholz made a motion to deny variance relief from Section 702, App. A-1 of the Windham Zoning Ordinance to allow frontage of 152 ft. for lot A and 90.5 ft. for lot B where 175 ft. is required in this district.

Mr. Partington seconded the motion

No discussion

Vote 5-0

Motion carries

Chairman Samsel noted there is a 30-day appeal period.

Lot 21-A-30, Case #24-2016

Applicant/Owner – John & Lois Freeston

Location – 11 Woodland Road

Zoning District – Residence A, Wetland & Watershed Protection District (WWPD)

Relief is requested from **Section 601.3** to allow a garage/storage shed in the WWPD, which is not a permitted use and **Section 702, App. A-1** to allow a garage/shed to be 44 ft. from the front lot line where 50 ft. is required.

Pam read the case and abutters list into the record.

John Freeston presented the application. He has lived in the home since 1974. The home is in the WWPD but they want to construct a small storage shed/garage. They scaled it back to minimize the impact to the WWPD. It will be parking for an additional vehicle and storage for a snow blower and other tools.

Mr. Partington believed they also need relief from section 703 as well as 702, App. A-1. Mr. Gregory believed because it was going in the front yard, they only needed relief from the front setback.

Chairman Samsel questioned if the abutting homes were closer to the road. Mr. Mazalewski noted they were set further back.

Mr. Freeston noted because of how the lot is configured, excavation and fill would be necessary if they were to move the structure farther back. The proposed location is relatively flat. The base would be crushed stone, with no fittings and there would be no digging.

Mr. Mazalewski added that the plan calls it a shed, but it should be changed to garage.

186 The board discussed whether the hearing should be postponed and re-noticed to included section
187 703 and agreed that would be most appropriate.
188

189 **MOTION: Mr. Scholz made a motion to continue case #24-2016 to the 9/13/16 meeting.**

190 **Mr. Mazalewski seconded the motion.**

191 **No discussion**

192 **Vote 5-0**

193 **Motion carries**

194

195 **Review of the 7/26/16 Minutes**

196 **MOTION: Mr. Scholz made a motion to approve the 7/26/16 minutes as amended.**

197 **Ms. Skinner seconded the motion**

198 **No discussion**

199 **Vote 4-0-1. Mr. Mazalewski abstained.**

200 **Motion carries**

201

202 **Review of the 8/9/16 Minutes**

203 **MOTION: Mr. Partington made a motion to approve the 8/9/16 minutes as amended.**

204 **Ms. Skinner seconded the motion**

205 **No discussion**

206 **Vote 5-0**

207 **Motion carries**

208

209 **MOTION: Mr. Scholz made a motion to adjourn at 8:48 p.m.**

210 **Ms. Skinner seconded the motion.**

211 **Vote 5-0-0.**

212 **Motion passes.**

213

214 **Submitted by Andrea Cairns**